

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Petitions of	)	
	)	
The California Public Utilities Commission	)	NSD File No. L-98-136
and the People of the State of California	)	
	)	
Massachusetts Department of	)	NSD File No. L-99-19
Telecommunications and Energy	)	
	)	
New York Department of Public Service	)	NSD File No. L-99-21
	)	
Maine Public Utilities Commission	)	NSD File No. L-99-27
	)	
Florida Public Service Commission	)	NSD File No. L-99-33
	)	
For Additional Authority to Implement	)	
Numbering Conservation Measures	)	
	)	
	)	
In the Matter of	)	
	)	
Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions of the	)	
Telecommunications Act of 1996	)	

To: Chief, Common Carrier Bureau

## COMMENTS

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## SUMMARY

AirTouch submits that these state petitions should be denied, but the Bureau should nevertheless encourage states to play a more active and effective role in number conservation. There are authorized, available steps states can take to provide numbering relief while the Commission considers how to proceed in the future. Bureau action on the petitions must be in accord with established Commission policies. In the *Pennsylvania Order*, the Commission set forth those policies after careful consideration of all parties' positions. Thus, the Bureau can implement, but not deviate from, the policies set by the Commission in that decision.

At the outset, the Bureau should make clear that the pendency of the *Numbering Resource Optimization NPRM* precludes grant of the petitions. The states here ask for several types of authority concerning numbering on a state-by-state basis, including number pooling trials, miscellaneous numbering assignment criteria, post-NPA-relief rationing, assignment of numbering resources outside rationing plans, code reclamation, implementation of extended local calling areas, inconsistent rate centers, NXX code sharing, and deployment of local number portability. All of the requested authority relates to issues under consideration in the *NRO* rulemaking. Indeed, the very role of state authorities is at issue there.

Grant of the petitions would inevitably either undermine or prejudice the outcome of the *NRO* rulemaking. Granting states delegated authority prior to completion of the rulemaking could undermine its result by removing a substantial portion of the United States from the policies that are ultimately adopted — indeed, the states involved here represent some 27% of the U.S. population. Moreover, grant of the petitions would prejudice the result of the *NRO* rulemaking. It would be difficult to avoid conferring authority on the states in the rulemaking if the petitions here are granted, particularly if other states are also granted authority. In short, granting state petitions would make it more difficult for the FCC to assert centralized national control over numbering in the rulemaking. The Commission has long expressed concern that departures from established policies while those policies are subject to an ongoing rulemaking can prejudice the rulemaking. Here, the petitions do not even have the advantage that grants might yield experimental data useful in the rulemaking. Accordingly, the Bureau should not grant the petitions at issue here.

The Bureau *should* make clear number conservation steps that states can take within their existing authority. This would encourage states to exercise their existing authority without prejudging — or prejudicing — the outcome of the rulemaking:

- First, rate center consolidation is the *single most effective* conservation measure that can be implemented by the states, and it could dramatically improve numbering resource optimization. No additional FCC action is needed for states to engage in rate center consolidation.
  - Second, state regulators can play an important informal role in making number administration more effective and efficient. One activity states could undertake is a program of *voluntary* data collection aimed at helping carriers use numbering resources more effectively. Such voluntary data collection efforts could result in
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identification and reclamation of unused codes. Similar state efforts in the past have avoided jeopardy situations. In states that have effective protections in place for proprietary data, AirTouch believes carriers will be willing to participate in voluntary state data collection and reclamation efforts, in conjunction with the code administrator.

Neither of these measures requires grant of the state petitions. Because the state petitions would undermine the national approach to numbering issues and Balkanize numbering administration in the United States, they should be denied.

No number pooling authority should be granted. In the *Pennsylvania Order*, the Commission strictly limited state authority to engage in number pooling trials. It refused to authorize mandatory number pooling trials, other than a single trial in Illinois, and that one mandatory pooling trial was allowed only because it would not infringe on federal guidelines and standards. The FCC allowed states to conduct pooling trials only if they were voluntary and there were adequate number resources for nonparticipating carriers. The FCC also held that there should not be multiple, inconsistent pooling trials. In particular, the Bureau cannot authorize pooling trials that could effectively require CMRS carriers to become LRN/LNP-compliant before the date set by the Commission.

With respect to the states' requests for authority over number assignment and oversight, AirTouch notes that the Commission has delegated authority over number administration to NANPA, not the states. States have no direct role in determining the readiness of carriers for additional numbering resources. Similarly, states have no authority to conduct numbering-related audits or to administer code reclamation. Assignment of numbering resources outside the NXX rationing process, likewise, is beyond the authorized role of states. Requests for delegations of authority concerning such activities must be denied, because grant would place states squarely in the middle of number administration oversight, which the Commission's existing policies, precedents, and guidelines forbid.

While states have been given authority to employ a variety of conservation measures as part of an area code relief plan, including number rationing, the Commission only allows number rationing in the context of area code relief. State petitions seeking post-area code relief rationing authority must be denied as not meeting the guidelines articulated in the *Pennsylvania Order*.

The petitions seeking authority to determine when to deploy local number portability must also be denied. The Commission has set dates for implementation in the 100 largest markets and has required carriers beyond those markets to deploy LNP only after a *bona fide* request by a competing carrier. It has delayed the implementation date for covered CMRS carriers and has made clear that non-covered CMRS carriers are under no LNP obligations. These regulations preempt the field. Any delegation of authority to states would directly conflict with Commission rules and policies.

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To: Chief, Common Carrier Bureau

**COMMENTS**

AirTouch Communications, Inc. ("AirTouch") hereby submits comments in response to the Bureau's Public Notice<sup>1</sup> inviting additional comment on a number of petitions filed by state public utility commissions requesting authority to implement a variety of extraordinary number

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<sup>1</sup> Public Notice, *Common Carrier Bureau Seeks Comment on State Utility Commission Requests for Additional Authority to Implement Telecommunications Numbering Conservation Measures*, DA 99-1198 (CCB, June 22, 1999).

conservation measures in advance of action on the Commission's pending number conservation proceeding. AirTouch respectfully submits that these petitions should be denied, but at the same time urges the Bureau to encourage the states to play a more active and effective role in number conservation. As discussed herein, there are certain authorized, available steps states can take to provide numbering relief during the pendency of Commission action in this area.

## INTRODUCTION

As the Public Notice indicates, these state petitions seek authority or waivers to permit the institution of a wide variety of number conservation measures on a state-by-state basis: implementation of various forms of number pooling trials; adoption of miscellaneous numbering assignment criteria, including fill rates, sequential number assignment, certification of readiness, and audits; maintaining rationing after NPA relief; assignment of numbering resources outside of NXX rationing plans; reclamation of NXX codes; implementation of extended local calling areas, inconsistent rate centers; NXX code sharing; and deployment of local number portability.<sup>2</sup>

The Public Notice further indicates that these petitions seek authority that "relate[s] to the issues under consideration in the *Numbering Resource Optimization Notice*,"<sup>3</sup> citing *Numbering Resource Optimization*, CC Docket No. 99-200, *Notice of Proposed Rulemaking*, FCC 99-122 (June 2, 1999) (*NRO NPRM*). That *NPRM* indicated that the pending state petitions would be addressed

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<sup>2</sup> Public Notice at 2. AirTouch notes that California has also filed a petition for waiver to implement service- or technology-specific area codes, NSD File No. L-99-36, that is not mentioned in the Public Notice. Comments on the latter petition, as well as a California petition mentioned in the Public Notice concerning an additional delegation of numbering authority, were filed on June 14, 1999.

<sup>3</sup> Public Notice at 2.

separately.<sup>4</sup> The Bureau's Public Notice thus paves the way for taking certain interim steps while the rulemaking remains pending.<sup>5</sup>

Any Bureau action on the state petitions must be in accordance with the Commission's *Pennsylvania Order*,<sup>6</sup> in which the Commission firmly established its policies and guidelines concerning state authority in the numbering area. That decision was reached after careful consideration of the positions of all parties, including states and telecommunications carriers. The Bureau's delegated authority permits it to implement, but not reconsider or deviate from, these Commission-established policies. Those policy decisions were fully consistent with the Commission's statutory mandate and have served the public interest well. While the Commission is taking another look at many of these issues in the *NRO NPRM*, it has not suggested that the determinations made in the *Pennsylvania Order* should be undone pending a ruling in the *NRO* proceeding. Accordingly, the state petitions must be governed by the Commission's established policies, as set forth therein.

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<sup>4</sup> See *NRO NPRM* at ¶ 245 & n.385.

<sup>5</sup> AirTouch does not address the issue of service- and technology-specific area codes because the Public Notice did not include the petitions seeking this relief and did not list this form of relief as being under consideration. Moreover, the *NRO NPRM* did not state that these petitions would be addressed separately, but indicated instead that comments on these petitions will be incorporated into the rulemaking docket. See *NRO NPRM* at ¶ 245 & n.384. As a result, the area code comments have been reserved for Commission consideration, thereby barring Bureau grant of the service- and technology-specific area code petitions.

<sup>6</sup> *Pennsylvania Public Utility Commission*, NSD File No. L-97-42; CC Docket 96-98, *Memorandum Opinion and Order and Order on Reconsideration*, FCC 98-224, 13 Comm. Reg. (P&F) 867, 1998 FCC LEXIS 5036 (September 28, 1998) ("*Pennsylvania Order*").

## DISCUSSION

In the *NRO* rulemaking, the Commission is considering what potential roles states may play that may be compatible with national uniformity in number administration. Before completion of that rulemaking, however, the Bureau clearly cannot grant states additional delegations of authority that the Commission has not yet considered. Likewise, the Bureau cannot delegate authority to the states in a manner that is inconsistent with existing Commission policy. There are, nevertheless, number conservation steps that states can take within their existing authority during the pendency of the rulemaking. AirTouch encourages the Bureau to make clear the important role that states can play and encourage them to exercise their existing authority, without prejudging — or prejudicing — the outcome of the rulemaking.

### **I. THE STATE PETITIONS SHOULD NOT BE GRANTED IN LIGHT OF THE PENDING *NUMBERING RESOURCE OPTIMIZATION* RULEMAKING**

The state petitions should be denied because grants would inevitably either undermine or prejudice the outcome of the *NRO* rulemaking. The Commission is considering whether it may be appropriate to delegate further authority to state commissions to address particular number conservation matters, and if so, under what circumstances and limits. Virtually all of the types of relief requested by the states are under consideration in the rulemaking.

In the *NRO NPRM*, the Commission has, for example, sought comment on whether state regulators should be delegated additional enforcement authority to ensure number conservation measures are being followed, while at the same time recognizing that giving states direct authority over number administration may be “cause for concern.” (§ 93.) With respect to the numbering policy authority being sought by the states, the Commission also indicated that it is considering whether states should be permitted to implement number pooling only after undertaking rate center



consolidation. (§ 120.) In addition, the Commission has sought comment on whether states should be delegated authority to establish fill-rate thresholds within FCC-established limits (§ 63); to conduct numbering resource audits (§ 88); to address NXX block reclamation (§§ 100, 118); to order carriers to become LNP-capable and to order institution of number pooling or opt out of it (§§ 145, 146-147)<sup>7</sup>; to require sequential number assignment (§ 191); and to establish cost allocation and recovery mechanisms for number pooling (§ 210).

With respect to each of these issues under consideration in the *NRO* rulemaking, it would be inappropriate, and would not serve the public interest, to grant states additional delegations of authority at this time. Expanding particular states' authority to deviate from established national norms and procedures at the very time the Commission is trying to come up with a comprehensive *federal* plan for number resource optimization *and determine the appropriate role for states* would inevitably undermine the Commission's ability to do just that and would Balkanize numbering. While there may be a role for expanded state authority with respect to some of these issues, that is a matter to be decided in the rulemaking.

To confirm, the rulemaking would be undermined by granting states prior delegated authority, particularly if the result is to remove a substantial portion of the United States from the policies that are ultimately adopted in the rulemaking. For example, in the rulemaking, the Commission could determine that there should continue to be national uniformity on a given issue and therefore decide *not* to grant the states additional delegated authority. That decision will be greatly undercut if the Bureau in the meantime has *granted* such expanded authority — contrary to

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<sup>7</sup> In fact, paragraph 145 cites the Maine PUC petition at issue here.

existing precedents, policies, and guidelines — to the states of California, New York, Massachusetts, Florida, and Maine, representing some 27% of the U.S. population.<sup>8</sup>

There is also the serious danger that grant of the petitions would prejudice the result of the *NRO* rulemaking, particularly if a significant number of states are granted additional authority. Under such circumstances, it would be difficult for the Commission to reassert centralized national control over numbering and refuse to delegate authority, even if it believes that should be done. At some point, the Commission will have to conclude that the “horse is out of the barn.” For that reason, the Commission has long recognized that departing from its established policies and rules in particular cases while those policies and rules are being debated in a rulemaking can prejudice the outcome of the rulemaking.<sup>9</sup> In keeping with such precedents, the Commission should not grant the petitions at issue here. Furthermore, delegating authority could add costs by requiring compliance with state rules that may be altered or overridden by the federal rules ultimately adopted, if the two sets of rules are different.

The grant of extensive authority to states through waivers and special relief petitions could eviscerate not only the Commission’s existing policies, but also the policies under consideration in the *NRO* rulemaking.<sup>10</sup> If the states in this proceeding are granted expanded delegations of authority,

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<sup>8</sup> See U.S. Department of Commerce, Economics and Statistics Administration, Bureau of Commerce, *Statistical Abstract of the United States 1998* at 28 (118th ed. 1998) (based on 1997 population figures).

<sup>9</sup> See, e.g., *Granite Broadcasting Corp.*, 13 F.C.C.R. 13,035, 13,038 (1998); *RKO General, Inc.*, 3 F.C.C.R. 5262, 5263 (1988); *accord Commission Requirements for Cost Support Material*, 8 F.C.C.R. 2306 ¶ 5 (CCB 1993).

<sup>10</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *accord Riverphone*, 3 F.C.C.R. 4690, 4692 (1988) (holding that the Commission “must not eviscerate a rule by a waiver”). To ensure that a rule is not eviscerated, waiver requests generally must contain a showing of uniqueness. It is not clear what circumstances are unique in these states that could also not be shown by other states.

other states may also seek such relief — and those additional petitions would be difficult to refuse if these are granted. At some point, the delegations of authority could become extensive enough that the Commission either effectively capitulates and issues a decision legitimizing the powers already granted to the states or instead issues a decision having little practical effect because of the exceptions already granted, which have undermined its authority and jurisdiction over the issue. Indeed, as the number of states and affected populations covered by expanded delegations of authority inevitably increases, the rulemaking could become pointless. The Commission must act to protect against such a result.<sup>11</sup>

In addition, the petitions for delegated authority cannot be granted based on the supposed need for experimental data. None of the measures proposed by the states could be implemented fast enough to provide timely results that could be considered in the *NRO* rulemaking, where the results of such experimentation might have been useful. Indeed, many of the measures the states seek to implement are likely to take longer than the rulemaking itself. For example, AirTouch has previously pointed out that California would not be able to initiate its proposed mandatory number pooling trial for two years or so, while the Commission expects to issue a Report and Order in the *NRO* proceeding this coming winter.<sup>12</sup>

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<sup>11</sup> In this regard, the Bureau has recently requested comment on yet another state commission petition seeking additional numbering authority, this time from the Texas Public Utility Commission. See Public Notice, *Common Carrier Bureau Seeks Comment on the Texas Public Utility Commission Petition for Delegation of Additional Authority to Implement Number Conservation Measures*, DA 99-1380 (CCB, July 14, 1999). AirTouch respectfully urges the Bureau to stop this disjointed process.

<sup>12</sup> Comments of AirTouch Communications, Inc., *Petitions of California Public Utilities Commission and State of California*, NSD File Nos. L-98-136 & L-99-36, CC Docket No. 96-98 (filed June 14, 1999) (AirTouch CPUC Comments), at 7.

## **II. WHILE THE STATE PETITIONS MUST BE DENIED IN ACCORDANCE WITH EXISTING POLICIES AND GUIDELINES, STATES CAN STILL PLAY AN EFFECTIVE ROLE IN NUMBER CONSERVATION DURING THE PENDENCY OF THE RULEMAKING**

If the Bureau acts on these petitions, it is obliged to act consistent with the Commission's established policies, precedents and guidelines; it cannot adopt novel policy positions on its own or contravene relevant Commission decisions and rules.<sup>13</sup> Again, the Commission must avoid prejudging issues subject to action in the *NRO NPRM*. AirTouch submits that these established policies and precedents require denying the requests for delegation of authority. Nevertheless, the Bureau should make clear that there other effective number conservation actions the states can take even before the *NRO* rulemaking has been completed, which have already been authorized.

### **A. The Bureau Should Encourage States to Engage in Permissible Number Conservation Efforts**

There are legitimate ways in which the states can significantly improve number conservation that are completely consistent with Commission policies and within existing state authority. AirTouch submits that states should actively pursue these efforts during the pendency of the *NRO NPRM*.

#### **1. Rate Center Consolidation**

Rate center consolidation is the *single most effective* conservation measure that can be implemented by the states in the relatively short term. As AirTouch has previously shown, its use could provide dramatic improvement in numbering resource optimization.<sup>14</sup> No additional FCC action is needed for states to engage in rate center consolidation. The *NRO NPRM* makes clear that

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<sup>13</sup> See 47 C.F.R. § 0.291(a)(2).

<sup>14</sup> See AirTouch CPUC Comments at 4; AirTouch Comments on NANC NRO Report, NSD File No. L-98-134 (filed Dec. 21, 1998), at 15-19.

states “do not require any additional delegation of authority from the Commission” to implement rate center consolidation and encourages state commissions to consider doing so.<sup>15</sup>

The Bureau should encourage states to engage in rate center consolidation as early and extensively as possible in order to achieve maximum conservation of numbering resources. While rate center consolidation may not be an easy step for states to take, given the need to rebalance rates to ensure revenue neutrality, it is nonetheless essential and is wholly within the states’ current authority.

## **2. Voluntary Data Collection and Code Reclamation Efforts**

While the Commission’s existing policies do not give states a specific *formal* role in the oversight of number administration, state regulators may nevertheless play an important *informal* role in making number administration more effective and efficient during the pendency of the *NRO NPRM*. Specifically, some states may wish to undertake programs of *voluntary* data collection with the objective of identifying ways in which carriers can use numbering resources more effectively.<sup>16</sup> Such voluntary data collection efforts may, for example, reveal that particular carriers have inventories of unused or underutilized codes that can be turned in. In fact, some state data collection and reclamation programs have resulted in identification and reclamation of codes and, as a consequence, have either caused NPAs to be removed from jeopardy or have prevented jeopardy situations altogether. Any such reclamation programs *must* be voluntary, however, and must involve NANPA, the code administrator.

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<sup>15</sup> *NRO NPRM* at ¶ 117.

<sup>16</sup> Any such data collection effort should be carefully tailored to meet the specific objective. For example, the states should *not* call for 1000-block utilization reports from carriers who cannot participate in number pooling.

In states that have effective protections in place for proprietary and competitively sensitive data, AirTouch believes that carriers will be willing to participate in voluntary data collection and reclamation efforts by state regulators, when specifically targeted to a reasonable objective — reclamation of unused NXX codes — because such efforts can improve number utilization and availability for *all* carriers. This is yet another interim measure that could provide numbering relief during the pendency of the *NRO NPRM*.

#### **B. The State Petitions Should Be Denied**

The state petitions seek a variety of delegations of authority that would, cumulatively, Balkanize numbering administration in the United States. Congress has recognized the need for national oversight of numbering administration and given the Commission exclusive jurisdiction over the North American Numbering Plan in the United States.<sup>17</sup> The Commission, likewise, has repeatedly emphasized the benefits of centralized, national numbering administration,<sup>18</sup> and it has rejected state attempts to oversee NXX code administration.<sup>19</sup>

For the reasons discussed herein, the state petitions should be denied because the relief they seek would undermine this national approach to numbering issues.<sup>20</sup> As the Commission has made

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<sup>17</sup> Section 251(e)(1) of the Communications Act, 47 U.S.C. § 251(e)(1).

<sup>18</sup> *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order*, CC Docket 96-98, 11 F.C.C.R. 19,392, 19,533 ¶¶ 320-322 (1996) (*Second Local Competition Order*).

<sup>19</sup> *See Second Local Competition Order* at 19,521 ¶ 293; *see also Administration of the North American Numbering Plan, Third Report and Order, and Toll Free Service Access Codes, Third Report and Order*, 12 F.C.C.R. 23,040, 23,071-75 (1997) (naming a central NANP administrator and established a framework for carrier support of NANPA administration).

<sup>20</sup> To be considered in light of established guidelines, state petitions must be detailed and specific. Some of the state petitions, such as California's, are vague and nonspecific, seeking open-ended authority to utilize a variety of number conservation and assignment measures at the state's discretion, without supplying the Commission with needed details. (AirTouch has previously shown that the vague, open-ended nature of the California

abundantly clear, “State commissions may not use conservation measures as substitutes for area code relief or to avoid making difficult and potentially unpopular decisions on area code relief.”<sup>21</sup> In particular, the following requested delegations of authority should be denied.<sup>22</sup>

### 1. Number Pooling

In the *Pennsylvania Order*, the Commission made clear that its policy was to strictly limit state commissions’ authority to engage in number pooling trials. In particular, it specifically declined to permit states to *require* number pooling.<sup>23</sup> It delegated to state commissions the authority to conduct number pooling trials only if, among other things, “carrier participation is voluntary” and certain other criteria are met.<sup>24</sup>

Moreover, the Commission determined that it would permit only a single state — Illinois — to conduct a mandatory number pooling trial, and then only after the Commission was assured that

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petition requires its denial. *See* AirTouch CPUC Comments at 6-9.) Such nonspecific, unsupported petitions must be denied.

<sup>21</sup> *Pennsylvania Order* at ¶ 26.

<sup>22</sup> The requests for delegation of additional authority concerning expanded local calling areas, inconsistent rate centers, sequential number assignments, NXX code sharing, and fill rates should also be denied. The Commission has *never* endorsed expanded local calling areas or inconsistent rate centers; in fact, they were addressed in the NANC Report on number resource optimization, yet the Commission’s response to that report did not even tentatively endorse these measures, instead finding that rate center consolidation has considerable promise. *Compare* *NRO NPRM* at ¶¶ 29, 244 with *id.* at ¶¶ 111-121. Thus, no delegation of authority can be granted for such measures under existing Commission policies and guidelines. With respect to state authority to order sequential number assignment and NXX code sharing, the Commission has already made its policies clear. *See* *Pennsylvania Order* at ¶¶ 25-26, 49; *Public Utility Commission of Texas*, DA 98-2141, 1998 FCC LEXIS 5465, at ¶ 8 n.33 (CCB Oct. 23, 1998). Thus, no delegation of authority is necessary or appropriate. Finally, the petitions concerning fill rates should likewise be denied, given that the Commission has clearly specified the very limited role of states in this area, and the states have *not* shown any compelling reason to give them any additional authority. *Pennsylvania Order* at ¶ 24.

<sup>23</sup> *Pennsylvania Order* at ¶ 27.

<sup>24</sup> *Pennsylvania Order* at ¶ 27.

“the trial will not impede our NPA relief guidelines and efforts to initiate national number pooling standards.”<sup>25</sup> While the Commission encouraged states to consider other innovative approaches, it nevertheless emphasized that the Bureau may only authorize number pooling trials with protections comparable to those in the Illinois trial, and established a procedure for evaluating such proposals.<sup>26</sup>

Furthermore, the Commission indicated that there should not be “multiple, inconsistent pooling trials throughout the country.”<sup>27</sup> Given these policy pronouncements and guidelines, the Bureau’s authority to authorize further state number pooling trials is highly circumscribed. Since the *Pennsylvania Order* found only the Illinois-style mandatory number pooling trial to meet the public interest, any request to conduct number pooling trials other than in accordance with that order will be inconsistent with the Commission’s determination of the public interest.

One additional point concerns the relationship between number pooling (which requires LRN/LNP capability) and the date set by the Commission for CMRS carriers to have LNP

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<sup>25</sup> *Pennsylvania Order* at ¶ 30. The Illinois trial also does *not* require number pooling by CMRS carriers. As the Commission points out, it does not require non-LRN/LNP capable carriers to participate and ensures that such carriers will continue to have access to non-pooled NXX codes.

<sup>26</sup> *Pennsylvania Order* at ¶ 31 (“We therefore encourage such state commissions, prior to the release of any order implementing a number conservation plan or number pooling trial, to request from the Commission an additional, limited, delegation of authority to implement these proposed conservation methods, *comparable to the authority we are granting to Illinois in this Order*. Because of the NANC’s broad industry representation and the subject-matter expertise of its members, the Commission will seek a recommendation from the NANC on the proposed conservation method that a state commission presents. We encourage state commissions to present their proposals to the NANC first. If a proposed conservation method will conserve numbers and thus slow the pace of area code relief, without having anticompetitive consequences, we will consider delegating additional authority to state commissions to use the conservation method. *We direct the Chief, Common Carrier Bureau, to make this determination, consistent with the authority we have delegated to the Common Carrier Bureau to determine whether area code relief plans are consistent with our regulations by acting on petitions filed by parties wishing to dispute proposed area code plans.*”) (emphasis added).

<sup>27</sup> *Pennsylvania Order* at ¶ 30.



capability. If a state were to require CMRS participation in pooling to have access to numbering resources, that would effectively require CMRS carriers to become LRN/LNP compliant before the date set by the Commission. The Commission's *Pennsylvania Order*, however, requires states with pooling to ensure that non-LNP carriers continue to have access to number resources.<sup>28</sup>

Accordingly, the Bureau cannot, through the grant of broad pooling authority to states, force early CMRS conversion to LRN/LNP compliance.<sup>29</sup> The Bureau may only grant delegated authority to states to implement pooling for LRN/LNP compliant carriers if adequate numbering resources will remain available to non-LRN/LNP compliant carriers (*e.g.*, sufficient numbers for foreseeable growth and for technology-neutral overlays) and if the other guidelines established in the *Pennsylvania Order* are complied with. The Bureau must deny the state petitions requesting delegations of authority to conduct number pooling trials which do not meet the precisely articulated Commission guidelines for number pooling trials.

## **2. Certification of Readiness**

The Commission has delegated authority over number administration to NANPA, not the states; states do not oversee NXX code administration.<sup>30</sup> Accordingly, the states have no direct role in determining the readiness of carriers for additional numbering resources. That is a matter for NANPA and is addressed by the INC NXX guidelines.<sup>31</sup> Under existing Commission policies and guidelines, therefore, there is no reason for states to play any role with respect to certifying the

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<sup>28</sup> *Pennsylvania Order* at ¶ 30.

<sup>29</sup> See AirTouch CPUC Comments at 8-9 (pointing out, *inter alia*, that California's petition, if granted, would effectively give it the authority to move up the date for CMRS LNP capability, contrary to Commission decisions and policies, without any justification).

<sup>30</sup> See *Second Local Competition Order*, 11 F.C.C.R. at 19,533 ¶¶ 320-322.

<sup>31</sup> See Industry Numbering Committee, *Central Office Code (NXX) Assignment Guidelines*, INC 95-0407-008 (Apr. 26, 1999) (available at <<http://www.atis.org>>).

readiness of carriers' facilities prior to assigning NXX codes, and petitions seeking such authority should be denied.<sup>32</sup>

### 3. Audits and Code Reclamation

For the same reason as the foregoing item, state petitions seeking authority to conduct audits to ensure compliance with number assignment standards and industry guidelines, and to grant states authority over code reclamation should be denied. This would place states squarely in the middle of number administration oversight, which the Commission's existing policies, precedents, and guidelines forbid.

As discussed above, oversight of NXX code assignments and number administration is *not* subject to state regulatory authority under existing FCC guidelines. There are established procedures for the reclamation of NXX codes by NANPA, under the INC Central Office Code Guidelines.<sup>33</sup> In the *Pennsylvania Order*, the Commission emphasized that there is a need to have national uniformity in the approach to number administration: "If each state commission were to implement its own NXX code administration measures without any national uniformity or standards, it would hamper the NANPA's efforts to carry out its duties as the centralized NXX code administrator."<sup>34</sup>

Accordingly, state petitions seeking delegations of authority concerning audits and code reclamation must be denied as contrary to established FCC policy. Nevertheless, as stated above,

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<sup>32</sup> The only role the states could play in this area would be to notify the NANPA if a carrier has received a code and has not become certified within the time required to activate the code.

<sup>33</sup> *See id.* The procedures set forth in Section 8.0 give the code holder responsibility for turning in codes that are in its inventory but unused, while NANPA has responsibility for contacting code holders to seek reclamation of unused codes. The guidelines also provide for resolution of certain issues by the Industry Numbering Committee.

<sup>34</sup> *Pennsylvania Order* at ¶ 33.

AirTouch supports *voluntary*, informal state data collection and number reclamation efforts where there is adequate protection for proprietary data.

#### **4. Maintaining Rationing After NPA Relief**

As discussed above in connection with sequential numbering, the Commission has given states authority to employ a variety of conservation measures as part of an area code relief plan, including number rationing. The Commission, however, only allows number rationing in the context of area code relief.<sup>35</sup> To the extent a state seeks to employ number rationing or other conservation techniques beyond the completion of an NPA relief plan, it must seek authority pursuant to the guidelines in the *Pennsylvania Order* quoted above in connection with number pooling trials.<sup>36</sup> Accordingly the state petitions seeking post-area code relief rationing authority must be denied as not meeting the guidelines articulated in the *Pennsylvania Order*.

#### **5. Assignment of Numbering Resources Outside of NXX Rationing Plans**

The state petitions seeking authority to assign numbering resources outside the NXX rationing process represent yet another way in which states are attempting to improperly insinuate themselves into number administration and oversight. This is clearly contrary to established Commission policies for the reasons discussed above, in connection with certification of readiness. Moreover, there is no need for a delegation of authority to states to deal with such matters. The

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<sup>35</sup> *Pennsylvania Order* at ¶ 26.

<sup>36</sup> See, e.g., *Public Utilities Commission of Texas*, DA 98-2141, 1998 FCC LEXIS 5465 (CCB Oct. 23, 1998).

Commission has a process for successfully addressing these situations.<sup>37</sup> Granting states such authority would be directly contrary to established Commission policy.

#### **6. Deployment of Local Number Portability**

The Commission has established detailed rules governing when and where local number portability must be deployed. It has set dates for implementation in the 100 largest markets and has required carriers beyond those markets to deploy LNP only after a bona fide request by a competing carrier. It has delayed the implementation date for covered CMRS carriers in light of their unique circumstances and has made clear that non-covered CMRS carriers are under no LNP obligations.

The FCC's current regulations concerning LNP deployment and implementation clearly preempt the field. There is no need for a delegation of authority to states, and indeed such a delegation would directly conflict with Commission rules and policies. No showing has been made to support revisiting this issue. Accordingly, the Bureau must deny the petitions requesting a delegation of authority to the states in this regard.

#### **CONCLUSION**

For the foregoing reasons, the petitions filed by the California Public Utilities Commission and the State of California, the Massachusetts Department of Telecommunications and Energy, the

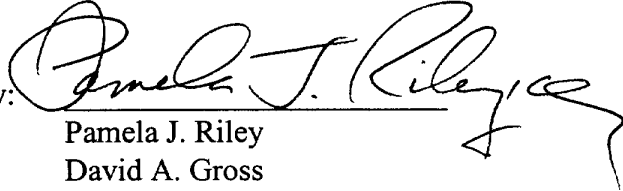
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<sup>37</sup> See, e.g., *Letter to Mr. Ronald R. Conners, Director, North American Numbering Plan Administrator re: Sprint PCS*, NSD File No. 99-25, DA 99-505, 1999 FCC LEXIS 1003 (CCB Mar. 12, 1999).

New York Department of Public Service, the Maine Public Utilities Commission, and the Florida Public Utilities Commission should be promptly dismissed or denied.

Respectfully submitted,

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July 16, 1999

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## **CERTIFICATE OF SERVICE**

I, Shelia L. Smith, hereby certify that on this 16th day of July 1999, copies of the foregoing Comments of AirTouch Communications, Inc. were served on the following by hand to:

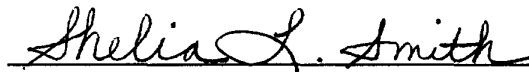
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